IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.MC.No. 1173 of 2007()

C.C.NO.237/1999 OF JUDICIAL FIRST CLASS MAGISTRATE COURT V-THIRUVANANTHAPURAM

PETITIONER:

PHILIP THOMAS, AGED 40,
S/O.MR.THOMAS PHILIP, VARAMPATH HOUSE,
BHAGATH SINGH NAGAR, NALANCHIRA,
THIRUVANANTHAPURAM.

BY ADV. SRI.BIJU HARIHARAN

RESPONDENTS:

---

1. BANK OF BARODA, FORT BRANCH,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
SENIOR MANAGER.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ
ADV.SRI,SHAFFEQUE M ABDUL KHADER FOR R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C.. No.1173 Of 2007

= = = = = = = = = = = = = = =

Dated this the 11th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instrument Act. He was acquitted by the learned Magistrate. But in appeal, he was found guilty and sentenced. He was sentenced to undergo imprisonment for one day. He was further directed to pay the cheque amount as compensation and in default of such payment to undergo simple imprisonment for a period of 6 months.

2. The petitioner along with the complainant has now come before this Court . According to them, subsequent to the filing of the case, the claim for compensation has been settled between the parties. The petitioner's father has paid an amount of Rs.65,000/- which the claimant bank has accepted in full satisfaction of the entire liability to pay compensation. The Appellate judgment shows that there was direction "to pay" compensation.

3. The short prayer of the petitioner is that the entire liability for payment of compensation having been admittedly paid and discharged, the default sentence may not be enforced.

4. Annexure-2 letter given by the bank, as also the affidavit filed

on behalf of the 1st respondent, do now clearly show that the entire liability for payment of compensation has been harmoniously paid, discharged and settled. In these circumstances, it is not necessary to insist on any further payment.

5. I am satisfied that the powers under Sec.482 Cr.P.C. can be invoked and the learned Magistrate can be directed not to execute the default sentence as imposed by this Court, as per judgment dated 15.6.07. This petition is accordingly allowed. The learned Magistrate is directed not to execute the default sentence . The petitioner shall appear before the learned Magistrate on or before 23.7.07 to undergo the substantive sentence of imprisonment for one day.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE